

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

**JOHN-PIERRE BANEY,**

Plaintiff,

v.

**ALBERTO GONZALES, et. al.,**

Defendants.

§  
§  
§  
§  
§  
§  
§  
§

Civil Action No. **3:06-CV-2064-L**

**ORDER**

This is a *pro se* employment discrimination and civil rights action.<sup>1</sup> Pursuant to the court's standing order of reference, this case was referred to the United States magistrate judge for pretrial management, including the determination of nondispositive motions and issuance of findings of fact and recommendations of dispositive motions. Before the court is Defendants' Motion to Dismiss, filed by all named Defendants January 19, 2007,<sup>2</sup> and Plaintiff's Motion to Deny Defendants' Motion to Dismiss,<sup>3</sup> filed February 8, 2007. On May 24, 2007, the Findings, Conclusions, and Recommendations of the United States magistrate judge ("Report") were filed, to which no objections were filed. After making an independent review of the pleadings, file and record in this

---

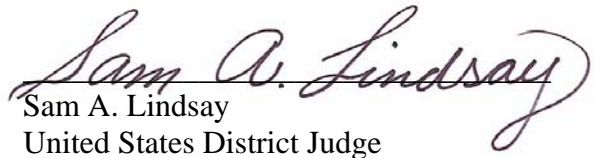
<sup>1</sup>Plaintiff's civil rights action is based on the decision of the Equal Employment Opportunity Commission ("EEOC"), which determined that he failed to establish his claim of employment discrimination. Plaintiff also alleges discrimination and retaliation based on his military status, citing the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), the "No FEAR Act (anti-discrimination and retaliation)" and "Whistleblower Act."

<sup>2</sup>Defendants' motion is a partial motion to dismiss, as Defendants seek dismissal of Plaintiff's Title VII and USERRA claims, but do not seek dismissal of Plaintiff's claims brought under the No FEAR Act and the Whistleblower Act.

<sup>3</sup>Plaintiff filed the motion to deny, but did not file a response.

case, and the magistrate judge's Report, the court determines that the magistrate judge's findings are correct. Accordingly, the magistrate judge's findings and conclusions are accepted as those of the court. Defendants' Motion to Dismiss is **granted in part** and **denied in part**. Defendant's motion to dismiss Plaintiff's Title VII claims is **granted** as to all Defendants other than Attorney General Alberto Gonzales; Defendant's motion to dismiss Plaintiff's Title VII claims is **denied** as to Defendant Alberto Gonzales. Accordingly, Plaintiff's Title VII claims are **dismissed with prejudice** against all named defendants except Attorney General Alberto Gonzales for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Defendant's motion to dismiss Plaintiff's USERRA claims is **granted**. Accordingly, Plaintiff's USERRA claims are **dismissed without prejudice** for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). Plaintiff's Title VII claim against Alberto Gonzales, and his claims under the No FEAR Act and the Whistleblower Act remain for disposition.

**It is so ordered** this 27<sup>th</sup> day of June, 2007.

  
Sam A. Lindsay  
United States District Judge